

Congress of the United States  
CONGRESSIONAL OVERSIGHT PANEL

## Opening Statement of Damon Silvers

### Congressional Oversight Panel Hearing on the Use of Private Contractors in the TARP

September 22, 2010

Good morning. My name is Damon Silvers, and I am the deputy chair of the Congressional Oversight Panel for the Troubled Asset Relief Program (TARP).

I want to begin by noting the absence of our former chair, Professor Elizabeth Warren, who recently resigned from the Panel to take on the difficult and important task of establishing the new Consumer Financial Protection Bureau. The Panel's work is a joint endeavor, and its accomplishments are shared by all of its members and its very dedicated staff. Even so, our work would be impossible without fierce, uncompromising leadership. For nearly two years, Elizabeth Warren provided that leadership. Her insistence that the TARP was created to help every American – not just those on Wall Street – remains the guiding principle of our work. We owe her a deep debt of gratitude.

We are here today to examine Treasury's use of private contractors under the TARP. In the minds of most Americans, the TARP is a government program, designed by Congress and paid for by taxpayers to promote a public purpose: the stability of our economy. But in many ways, the TARP today no longer looks like a government program. Many of its most critical functions are managed by private companies, operating under 83 different contracts and agreements worth about \$445 million. Congress authorized the TARP program to contract out certain types of work that would otherwise have been required to be done by the government itself.

To give just one example, Treasury hired Freddie Mac to serve as the compliance officer for its foreclosure mitigation programs. To do the job, Freddie Mac plans to hire 200 people. By comparison, Treasury has only 220 staffers working on all TARP programs combined. Put another way, the vast majority of people working on the TARP today receive their paychecks from private companies, not the federal government.

Private contractors do not take an oath of office. They do not stand for election, nor are they subject to civil service rules. Their goal is to turn a profit – not to advance the public good. While the emergency situation in the fall of 2008 required the Treasury to engage the help of private firms to act with the necessary speed, the breadth and depth of the outsourcing involved in the TARP inevitably raises questions about accountability, conflicts of interest, and whether certain work should be performed by government alone.

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The bulk of the TARP's contracting dollars have been spent on law firms, investment management firms, and audit firms. The nature of these firms' relationship to the financial system gives rise inevitably to a wide range of potential conflict issues, including the potential for conflicts with these firms' other clients, self-interested behavior in the management of TARP contracts, and the misappropriation of market relevant information that comes into contractors' possession as a result of working for the TARP.

Treasury has, to its credit, taken steps to mitigate these concerns and provide greater accountability. Most notably, it posts all TARP contracts to its website. But although this is an important first step, it is not a complete solution. Contractors are, for example, immune to requests under the Freedom of Information Act. They may hire subcontractors, and those subcontracts need not be disclosed to the public nor even to Treasury itself. Important aspects of a contractor's work may be buried in work orders that are never published in any form. In short, as work moves farther and farther from Treasury's direct control, accountability and transparency to Congress and the public becomes more and more difficult.

Congress recognized this risk when it created the TARP, so it tasked the Panel with examining Treasury's use of private contractors. We have considered the issue at length in several of our past reports, and today, we are digging even deeper.

I hope today we will be able to address the following questions:

How has Treasury determined what functions associated with the TARP should be contracted out?

How has Treasury overseen the performance of TARP contractors?

What measures has Treasury put in place to address contractor conflicts of interest, and what has Treasury's approach been to potentially disabling conflicts of interest?

We are joined by three panels of witnesses, including representatives from Treasury, the largest TARP contractors, and government accountability initiatives. We are grateful for their presence and look forward to their testimony.

Before we proceed with the testimony, I would like to offer my colleagues on the Panel an opportunity to make their own opening remarks.